

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

RUDY GONZALES,

Plaintiff

-vs-

ANDREW SAUL, COMMISSIONER
OF SOCIAL SECURITY,

Defendant.

Case No. CIV-17-0763-F

ORDER


Before the court is the “Motion for Attorney Fees under 42 U.S.C. § 406(b)” filed by plaintiff and his counsel, Miles L. Mitzner of the Mitzner Law Firm. Doc. 34. Defendant filed a response brief. Doc. no. 35. A reply brief was filed. Doc. no. 37.

Upon review, the Court finds that plaintiff’s attorney is entitled to an award of fees under § 406(b) for court work in this matter, in the requested amount of \$25,519.75. The requested amount is consistent with the terms of the fee contract, is reasonable, and is not more than twenty-five percent of the past-due benefits obtained as a result of the court’s judgment remanding this case for further proceedings.

The motion for attorney fees is therefore **GRANTED**. Under 42 U.S.C. §406(b), plaintiff’s attorney is hereby **AWARDED** fees in the amount of \$25,519.75 for court work in this matter. The Commissioner is instructed to disburse the amount of \$25,519.75 to the Mitzner Law Firm, out of the past-due

benefits awarded to plaintiff following the remand in this case. Because the Commissioner's current procedures require direct payment for § 406(b) fees to be made to an individual attorney rather than to a firm, the fee should be made payable to Miles L. Mitzner of the Mitzner Law Firm, PLLC. In accordance with the law which prohibits counsel from being paid double for the same work, plaintiff's attorney shall refund to plaintiff the lesser of this § 406(b) award and plaintiff's award pursuant to the Equal Access to Justice Act.¹ *See, Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (fee awards may be made under both EAJA and § 406(b), but the claimant's attorney must refund to the claimant the amount of the smaller fee).

IT IS SO ORDERED this 21st day of January, 2020.


STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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¹ Plaintiff was awarded attorney fees under the EAJA in the amount of \$7,432.20. Doc. no. 30.